

ADR in Legal Education and Promoting Student Wellbeing Forum

20 - 21 February 2012 | RMIT University, Melbourne
Graduate School of Business and Law
379 - 405 Russell Street Melbourne VIC 3000

The Forum will discuss the importance of including ADR as a core component of legal education (20 Feb) and the need to promote the well-being of law students (21 Feb).

Our confirmed key-note speakers are:

- [Prof Tania Sourdin](#) (Monash)
- [Dr Kath Hall](#) (ANU)
- [Assoc Prof Molly Townes O'Brien](#) (ANU)
- [Stephen Tang](#) (ANU)

Call for Abstracts

This Forum will discuss the importance of including ADR as a core component of legal education (20 Feb) and the need to promote the well-being of law students (21 Feb). Connections between these two themes will also be explored.

Submission Guidelines

Presentation Topics

Please select one of the two themes for the conference:

1. ADR in legal education
2. Promoting student wellbeing

Presentation Type

Please choose from the following options, the type of presentation you would like to submit:

Paper abstract;
Refereed paper;
Poster

Paper Abstract

Participants who wish to present at the Forum are invited to submit an abstract of their proposed presentation using the *abstract submission template*. Depending on numbers, papers by Forum participants may be presented in streams according to themes.

Refereed paper

Participants who wish to present at the Forum and who also wish to have your paper considered as a refereed paper for the special edition of the *Australasian Dispute Resolution Journal* are invited to submit a full paper by the due date. Submissions to the ADJR will require a scholarly paper of approximately 4000 words which will be double blind reviewed to the DEEWR C1 standard. Papers should be prepared following the author submission guidelines for the Journal.



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List of Paper Session Authors and Abstracts

Becky Batagol* and Ross Hyams

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Paper Title: Non-Adversarial Justice and the Three Apprenticeships of Law

The concept of the 'legal apprentice' has achieved currency again since the publication in 2007 of the Carnegie Report. The Carnegie Report sets out the three essential apprenticeships of professional education: the cognitive, the practical and the identity apprenticeships. A comprehensive professional education will address each of these three aspects of career training in an integrated and planned manner.

Since 2007, Monash University has offered the elective undergraduate law unit, Non-Adversarial Justice. The unit takes a radically different approach to the study of law by focusing on forms of conflict management, dispute prevention and dispute resolution outside the adversarial system. It examines ways of lawyering that employ non-adversarial, psychologically beneficial, and humanistic methods of solving legal problems, resolving legal disputes and preventing legal difficulties. Non-Adversarial Justice is pedagogically comprehensive because it educates students in each of the three apprenticeship areas. On the cognitive level, students are trained in the theory of a range of non-adversarial principles and processes, such as therapeutic jurisprudence,

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Alternative Dispute Resolution (ADR), restorative justice and preventative law. A practical apprenticeship is provided by the possibility of participating in a non-adversarial placement program and in-class skills sessions. The identity apprenticeship is taught through a focus on the values of adversarialism and non-adversarialism in our legal system, in lawyering and in legal education and through asking students to reflect on their own emotional responses. This paper outlines the comprehensive teaching approach.

Clare Coburn

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Paper Title: Listening to Ourselves and Others in ADR: Developing Listening and Communication Capacities for Wellbeing in Legal Education

Wellbeing implies a capacity to recognise our own inner states; to listen inwardly and identify the thoughts, emotions and reactions that arise within us as we confront the challenges, conflicts and difficulties of daily life, work and relationships. Research has demonstrated that legal education may impact negatively on students' mental health leading to higher levels of depression. My research on listening in conflict indicates that mediators use a highly developed capacity for inner listening to identify their own mental and emotional states in order to listen to disputants in conflict and to make decisions about appropriate interventions. This suggests that development of the capacity to listen inwardly will impact positively on mediation and other forms of dispute resolution. Incorporation of a focus on listening and inner awareness in the teaching of mediation and other forms of dispute resolution may be a way to heighten law students' self-awareness, empathy and resilience.

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Pauline Collins

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Paper Title: Student Reflections on the Inclusion of ADR in the Law Curriculum.

This paper reflects on the concerns with mental wellbeing of Australian law students. The paper discusses the role that legal education plays in this and whether the teaching of ADR can offer any positive assistance in overcoming some of the issues. Reflections and experience of law students who have participated in an ADR course as part of the core of the LLB curriculum are reported. These reflections indicate possibilities for changing the outlook for law students through inclusion of ADR as a core course.

Peter Condliffe

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Paper Title: Teaching ADR Practice: Considering Issues of Efficiency, Effectiveness and Fairness

To proponents of alternative dispute resolution (ADR) better efficiency is often proclaimed as one of its core elements or objectives and is often equated with the fairness or effectiveness of such processes. However, efficiency is a multifaceted concept involving a range of different measures and outcomes. Also, a review of the literature shows that overly focusing on efficiency can be misleading and limiting. Certainly, efficient processes may be fair or fairer than less efficient processes but simplifying this relationship can be misleading. This paper will examine some of these issues and how we may incorporate the various elements that make up effective ADR practice, including efficiency, into our teaching and research endeavours.

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Paper Title: The Role of Role-Play in Teaching and Assessing Substantive Knowledge and Oral Advocacy Skills in ADR Subjects, with Special Focus on International Commercial Arbitration.

Advocacy is one of the core skills that differentiate a good lawyer from others. For law graduates, getting these skills from their education, instead of learning them the hard way during their early professional practice, is a great advantage. But teaching and assessing advocacy is unlike teaching and assessing substantive areas of law; it is about skills, less than about knowledge. In addition, there are major differences even within advocacy skills. Although based on similar skills, client advocacy, courtroom advocacy and advocacy to be used in alternative dispute resolution are subtly different and there are further differences in how they are practised in common and civil law systems. Moreover, written and oral advocacy also require different skills; while written advocacy can, arguably, be considered more important, one can master written advocacy without good oral advocacy skills; the reverse, however, is less likely.

This paper focuses on oral advocacy skills and on the place of role-play in the teaching and assessment of oral advocacy. The paper applies this focus to the area of alternative dispute resolution, with special emphasis on international commercial arbitration. This subject area of law, if taught properly, addresses several themes for contemporary teaching that apply to higher education increasingly around the world, such as internationalisation of legal education, research-led education and work-integrated learning, providing a wide range of general and specialized legal skills; it also satisfies the increasing need of the legal profession for graduates trained in alternative dispute resolution methods.

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The paper will primarily be based on case studies conducted by the author in international commercial arbitration and arbitration moot classes at the University of Canberra over the period of one year (2011), combined with data collected from several other Australian universities teaching similar subjects. The analysis shows us why and how to use role-play as an efficient tool in both teaching and assessing ADR subjects, especially international commercial arbitration.

Kathy Douglas

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Paper Title: The Content of ADR Courses In Law Schools: Towards Second Generation Practice?

The teaching of ADR in legal education can contribute to law students' development of professional identity. However, it is important to consider the content of present ADR courses in law schools. ADR teachers should consider including in their curriculum a range of material that challenges law students and addresses the “cutting edge” of the field. Emergent theory in ADR, sometimes known as second generation practice and pedagogy, argues that negotiation and mediation can lead to conflict transformation between parties, where there is fundamental change in the ways that parties perceive each other, the conflict and the larger societal issues that pertain to the dispute. Second generation practice differs from first generation paradigms in negotiation and mediation, because it is transactional rather than instrumental, relational rather than individualistic and does not privilege the rational over emotional concerns in conflict. This article argues that teachers of ADR should include emergent theory and practice in the content of their courses in ADR in order to help law students understand the full potential of negotiation and mediation.

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Paper Title: Humanising Legal Education: Lessons from ADR

This paper proposes a humanising framework for students' experience of law school, one that aims to promote student wellbeing. The framework relies upon a relational conception of social processes and articulates the concept of *relationship* as the scaffolding upon which to build a law school experience. The framework proposed is considered according to the three apprenticeships of legal professional education proposed by the *Carnegie Report*, namely, the cognitive, practical and ethical-social/formative apprenticeships. As the impetus for a humanising framework, the concept of burnout is advanced as a metaphor for the depersonalising, emotionally depleting and distressing experience of law school evidenced by recent research. Burnout is placed on a continuum of student wellbeing polarised by student engagement. The humanising framework articulated to advance student engagement is drawn from the scholarship and practice in ADR.

Rachael Field and James Duffy

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Paper Title: Teaching Dispute Resolution in the First Year of Law to Promote Law Student Well-Being

In 2010, Field received an Australian Learning and Teaching Council Teaching Fellowship to consider curriculum renewal and design strategies to address the high levels of psychological distress being experienced by law students. The central premise of the Fellowship is that incorporating alternative dispute resolution into the curriculum, both by way of specialist elective subjects and through embedding ADR throughout the Priestly 11 core subjects, is a critical strategy for the promotion of law student well-

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being. This is a premise supported by the work of Jill Howieson and Bill Ford of the University of Western Australia.

This paper describes the first year dispute resolution subject that has been designed as part of Field's ALTC Teaching Fellowship and piloted at the Queensland University of Technology Law School in semester 2 2011. The subject, entitled *LWB150: Lawyering and Dispute Resolution*, is offered to the legal academy as a possible strategy for the promotion of student psychological well-being in Law Schools in Australia. The paper articulates and analyses the ways in which the focus in the subject on introducing students to non-adversarialism, as well as the positive role of lawyers in society as dispute resolvers – specifically works to promote law student psychological well-being. Student feedback provided through the formal university subject evaluation process (LEX) is offered as evidence to suggest that the subject has been successful in achieving some of its primary aims.

Judy Gutman* and Matthew Riddle

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Paper Title: ADR in Legal Education: learning by doing

Practice-based courses have grown in Australian law school curricula, along with the idea that law schools must provide the forum for students to learn what lawyers actually do. Teaching and learning in a theoretical framework, on its own, provide deficiencies in legal education.

In 2005, in recognition of the key place ADR plays in contemporary best practice lawyering as well as the advantages of a 'learning by doing' teaching and learning model, La Trobe University Law School introduced 'Dispute Resolution' as a compulsory first

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year law stand alone subject. In addition to the traditional method of a lecture or seminar-discussion session, a simulation exercise is used to teach the mediation process. The mediation role play assessment exercise is the culmination of skills teaching and learning in the subject.

Students engage in a range of exercises aimed at skills training in the areas of communication, negotiation and the mediation process. Despite the variety of experiential, class based preparation, and the theory based lecture program, students seek other strategies to help prepare them to act as mediators in the role play assessment exercise. A film of the facilitative model of mediation, together with accompanying written teaching and learning materials, will assist student learning in this area.

Linda Haller

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Paper Title: Admission and Student Wellbeing

Open-textured enquiries by admission authorities into the character and suitability of applicants for legal practice can compromise student wellbeing. The impending investigation can lead to an atmosphere of secrecy and distrust among law students, undermine collegiality, peer support and a moral community (Rhode) and deter students from seeking appropriate treatment. Given the questionable predictive effect of such disclosures, it is time to consider how both student wellbeing and the provision of legal services can both be enhanced.

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Paper Title: A Philosophy of Wellbeing for Law Students and Lawyers

This paper proposes ways that law school curricula can adapt in response to the research on the high rates of anxiety and depression among law students and within the legal profession they aspire to enter. The paper proposes that individual law students should be encouraged to integrate into their studies ways of thinking and behaving that will improve their overall happiness and wellbeing. It draws on research in cognitive, behavioural and positive psychology, as well as arguments from classical and contemporary philosophies of happiness. It proposes acknowledging a new duty: that even before their duty to the court, lawyers need to recognize their primary duty is to themselves - not in material gain or through exploiting their social power - but in maintaining a high level of individual fitness, both physically and psychologically. It also proposes that law schools and professional bodies promote the idea that law students and lawyers can help protect themselves from anxiety-related depression by becoming more mindful about how they think.

Combining both strategies of a duty to oneself and mindful practice will maximise the chances of law students not only surviving law school and entering legal practice as well-adjusted professionals, but doing so with a degree of gratitude for the privilege of practicing law and wellbeing in the confidence of doing so for the service and improvement of society.

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Paper Title: Empirical Findings on Student Wellbeing and the Law School Experience

This paper presents selected findings of a comprehensive study of the relationship between law student wellbeing and students' experience of law school. The research was conducted at Melbourne Law School in 2011 and the sample included students from both the LLB and JD programs. While the levels of depression, stress and anxiety recorded by participants in this survey are similar to those recorded in other Australian and international studies of law student wellbeing, the survey offers new insight into the relationship between students' experience of being a law student and their levels of psychological distress.

Overall, our JD students expressed a significantly higher level of satisfaction with studying law, and with their course experience, than our LLB students. This may be attributable in part to the selection of a graduate cohort based on interest and aptitude for study in law, as well as prior academic achievement. It may also be attributable to the range of measures intentionally instituted within the design of the JD program to promote academic engagement, social connections, timely access to academic support and wellbeing awareness.

In this context, the findings of our empirical study regarding depression, anxiety and stress (DASS) levels were somewhat surprising. There were no statistically significant differences in the DASS levels of students in our JD program when compared with

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students in our LLB program. This data has important implications for an understanding of both the causes of law student distress, and of effective wellbeing interventions.

Olivia Rundle* and Sarah Hiller

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Paper Title: Teaching Self-Reflection to Law Students in a Dispute Resolution Unit

Dispute Resolution Units in the law curriculum provide an opportunity for students to practise and develop their self-reflective skills. This paper discusses the justifications for using self-reflection in dispute resolution teaching and explains the importance of defining clearly what is meant by reflection in a particular context. It describes the way that self-reflection was taught, imbedded into learning activities and assessed in an undergraduate Dispute Resolution Unit at the University of Tasmania. Some preliminary results of an evaluation of the use of self-reflection in the Unit are also presented. These tend to validate the strategies that were adopted to inform students about the meaning of self-reflection and what was required of them in assessment tasks.

Darryl Saunders

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Paper Title: Teaching a simulcast intensive Alternative Disputes Resolution unit: The Northern Territory experience

Teaching disputes resolution at a distance presents the course designer with logistical, pedagogical and equitable obstacles. The author describes how the method of integrating modes of delivery enabled students in a Charles Darwin University ADR course to create a single community of practice, utilising legitimate peripheral participation, a pedagogy more commonly called Situated learning. The author will describe how, multi-station to

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multi-station video conferencing software, and a roving robot webcam was used to facilitate this. Through an extension of the *On-line fishbowl*, by use of revolving characters in given scenarios, the internal student community drew the external students in, to become an integral part of the unit. The pedagogical objective was to reposition the external students from the traditional circumstance of being external to the process, to being very much internal to the process thus removing the inequity barriers sometimes associated with on-line distance courses. A short qualitative research questionnaire was conducted yielding a comparatively small sample size of 9, representing a 25% response rate. A key theme that emerged was that this objective was successfully achieved.

Helen M Stallman

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Paper Title: Integrating Student Wellbeing Within the Law School Curriculum

Resilience is important to enable students to be able to manage the stress of tertiary study and maintain work/life balance. Law students with high levels of perfectionism and competition may be particularly at risk for mental health problems, which can negatively affect their academic and career performance. Despite high prevalence rates of psychological distress in university students and greater access to counselling and health services than the general population, relatively few students access professional services for mental health related issues. This poses challenges to administrators, academics, and student support staff in identifying opportunities for intervention and engaging students. This paper discusses how two Australian universal interventions, the *Learning Thermometer* and *thedesk* can integrate teaching, learning, support and wellbeing to improve the mental health and success of law students.

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Paper Title: Developing Notions of Fairness in Negotiation Support Systems

One of the major concerns raised by people using negotiation processes is about the fairness or justice of the process. Individuals undertake negotiation to derive better outcomes than would otherwise occur. This requires them to engage in interest based negotiation.

But interest based negotiation focuses upon the interests of the disputants rather than any objective measures of fairness. By the notion of fairness we mean ‘legally just’ rather than the more commonly accepted negotiation concept of meeting the interests of all parties equally.

One example of the need for focusing upon justices arises in the domain of family law, where parents might focus upon their own desires, rather than the needs of the children. Similarly, in employment law, individual bargaining between employers and employees might lead to basic needs (such as recreation leave and sick leave) being whittled away. It is hence vital to investigate how can we develop measures, or at the very least principles, for the construction of *legally just* negotiation support systems? Through an examination of bargaining in the shadow of the law and principled negotiation, we suggest principles which when applied, will encourage fairness and justice in the development of negotiation support systems. Such principles include providing enhanced transparency, supporting bargaining in the shadow of the law and allowing for limited discovery. However, the use of each of these principles also has some negatives, We indicate how some of these principles can be applied in Australian Family Law.

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